

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gabriela Cabrera,

Plaintiff,

v.

Noble Investments, LLC, a
California Limited Liability
Company;
Azusa Supermarket, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Gabriela Cabrera complains of Noble Investments, LLC, a California Limited Liability Company; Azusa Supermarket, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She has polio. She cannot walk and uses a wheelchair for mobility.
2. Defendant Noble Investments, LLC owned the real property located at

1 or about 1512 E. Amar Rd., West Covina, California, in October 2018.

2 3. Defendant Noble Investments, LLC owns the real property located at or
3 about 1512 E. Amar Rd., West Covina, California, currently.

4 4. Defendant Azusa Supermarket, Inc. owned Island Pacific Supermarket
5 located at or about 1512 E. Amar Rd., West Covina, California, in October
6 2018.

7 5. Defendant Azusa Supermarket, Inc. owns Island Pacific Supermarket
8 ("Supermarket") located at or about 1512 E. Amar Rd., West Covina,
9 California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to the Supermarket in October 2018 to shop for meat.

7 11. The Supermarket is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Ticket dispensers in the meat department are one of the facilities,
10 privileges and advantages offered by Defendants to patrons of the
11 Supermarket.

12 13. There was a ticket dispenser placed on the transaction counter of the
13 meat department for patrons to take a serving number.

14 14. However, the ticket dispenser was more than 48 inches above the finish
15 floor and not accessible for wheelchair users. In fact, the ticket dispenser was
16 about 65 inches high.

17 15. Currently, there is a ticket dispenser placed on the transaction counter
18 of the meat department for patrons to take a serving number.

19 16. Currently, the ticket dispenser is more than 48 inches above the finish
20 floor and is not accessible for wheelchair users.

21 17. Defendants have failed to maintain in operable working condition those
22 features of facilities and equipment that are required to be readily accessible to
23 and usable by persons with disabilities at the Subject Property.

24 18. Plaintiff personally encountered this barrier.

25 19. This inaccessible facility denied the plaintiff full and equal access and
26 caused her difficulty, discomfort, and embarrassment.

27 20. Plaintiff plans to return and patronize the Supermarket but is deterred
28 from visiting until the defendants remove the barriers.

1 21. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 22. The barriers identified above are easily removed without much
5 difficulty or expense. They are the types of barriers identified by the
6 Department of Justice as presumably readily achievable to remove and, in fact,
7 these barriers are readily achievable to remove. Moreover, there are numerous
8 alternative accommodations that could be made to provide a greater level of
9 access if complete removal were not achievable.

10 23. Plaintiff is deterred from returning and patronizing the Supermarket
11 because of her knowledge of the barriers that exist. Plaintiff will, nonetheless,
12 return to assess ongoing compliance with the ADA and will return to patronize
13 the Supermarket as a customer once the barriers are removed.

14 24. Given the obvious and blatant nature of the barriers and violations
15 alleged herein, the plaintiff alleges, on information and belief, that there are
16 other violations and barriers on the site that relate to her disability. Plaintiff
17 will amend the complaint, to provide proper notice regarding the scope of this
18 lawsuit, once she conducts a site inspection. However, please be on notice that
19 the plaintiff seeks to have all barriers related to her disability remedied. See
20 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
21 encounters one barrier at a site, she can sue to have all barriers that relate to
22 her disability removed regardless of whether she personally encountered
23 them).

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
27 defendants (42 U.S.C. section 12101, et seq.)

28 25. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 26. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
17 Appendix "D."
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs or to ensure that, to the
22 maximum extent feasible, the path of travel to the altered area and
23 the bathrooms, telephones, and drinking fountains serving the
24 altered area, are readily accessible to and usable by individuals
25 with disabilities. 42 U.S.C. § 12183(a)(2).

26 27. Ticket dispensers are covered by the height/reach requirements of the
27 2010 Standards § 308.3 for control or operating mechanisms. If the clear floor
28 space allows parallel approach by a person in a wheelchair, and the high-side

1 reach is not obstructed, the maximum high side reach allowed shall be 48
2 inches.

3 28. Here, the failure to provide an accessible ticket dispenser in the meat
4 department is a violation of the ADA.

5 29. The Safe Harbor provisions of the 2010 Standards are not applicable
6 here because the conditions challenged in this lawsuit do not comply with the
7 1991 Standards.

8 30. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 31. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13 32. Given its location and options, plaintiff will continue to desire to
14 patronize the Supermarket but she has been and will continue to be
15 discriminated against due to the lack of accessible facilities and, therefore,
16 seeks injunctive relief to remove the barriers.

17
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
19 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
20 51-53)

21 33. Plaintiff repleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
24 that persons with disabilities are entitled to full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishment of
26 every kind whatsoever within the jurisdiction of the State of California. Cal.
27 Civ. Code §51(b).

28 34. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 35. Defendants' acts and omissions, as herein alleged, have violated the
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
4 rights to full and equal use of the accommodations, advantages, facilities,
5 privileges, or services offered.

6 36. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
7 discomfort or embarrassment for the plaintiff, the defendants are also each
8 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
9 (c).)

10
11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide
13 relief as follows:

14 1. For injunctive relief, compelling Defendants to comply with the
15 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
16 plaintiff is not invoking section 55 of the California Civil Code and is not
17 seeking injunctive relief under the Disabled Persons Act at all.

18 2. Damages under the Unruh Civil Rights Act, which provides for actual
19 damages and a statutory minimum of \$4,000.

20 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
21 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

22
23 Dated: December 17, 2018 CENTER FOR DISABILITY ACCESS

24
25
26 By: 

27 _____
28 Chris Carson, Esq.
Attorney for plaintiff